

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-57-EC - ORDER NO. 2003-575
SEPTEMBER 18, 2003

IN RE: Mr. and Mrs. James Tarmann,)	ORDER RULING ON
)	PETITION FOR
Complainants,)	CLARIFICATION
)	
vs.)	
)	
Duke Power, BellSouth, and the Public)	
Service Commission Staff,)	
)	
Respondents.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Clarification (Petition) from Duke Power n/k/a Duke Power, a division of Duke Energy Corporation (Duke) for a clarifying Order. Duke's Petition seeks partial clarification of the Commission's Order No. 2003-358.

Duke seeks clarification from the Commission as to how to implement and pay for the requirements of the single phrase in the Order, which reads, "...[Duke] shall institute necessary construction or erosion control techniques to correct and maintain the immediate area of the roadway and surrounding right-of-way..." Duke alleges that there is no basis in the Commission's Regulations 103-391, 103-360, and 103-347 nor in Duke's approved Underground Distribution Installation Plan to require or permit Duke to take the action outlined in this single objectionable phrase. Duke argues further that instituting necessary construction or erosion techniques required to maintain the

immediate area of the roadway and surrounding right of way may not be possible without altering or otherwise performing work on the property of the Tarmanns and other property owners in areas outside Duke's right-of-way. Duke also states that it has no rights under the right-of-way agreement or the agreement for electric service to alter property outside its established right-of-way.

Duke argues that there is no cost mechanism which Duke could legitimately access to pay for the actions which Duke objects to in Order No. 2003-358. Duke states that its customers are subject to its Service Regulation Leaf B which states that the customer shall at all times furnish the Company a satisfactory and lawful right-of-way over his premises for the Company's lines and apparatus necessary or incidental to the furnishing of service. Duke also opines that according to Duke's Approved Underground Distribution Installation Plan, the customer shall be responsible for any additional expenses related to a change in grade on the customer's premises. To further support its position, Duke states that its Underground Distribution Plan reads that "... the final grade levels of the building site should be established by the owner." Furthermore, "should established lots or final grade levels change after installation of underground electrical facilities has begun, or if installation of electrical facilities is required by the owner before final grades are established, and either of these conditions results in additional expenses to the Company, payment for these additional expenses shall be made to the Company by the owner."

The Tarmanns also filed a Response to Duke's Petition. In their Response, the Tarmanns state that they believe that Order No. 2003-358 is well stated and requires no

clarification. The Tarmanns also argue that the Commission should not be burdened with determining what cost mechanism Duke could or should access to pay for the action required to correct the problem created by lack of maintenance.

We agree with Duke that Order No. 2003-358 should be clarified with regard to the language contained in Section III, paragraph 7 of the order. Duke raises a concern with regard to this paragraph that requires Duke “to correct and maintain the immediate area of the roadway and surrounding right-of-way.” We understand that this quoted language could be read broadly to require Duke to maintain areas outside of the right-of-way. Therefore, the Commission holds that it should eliminate the language from Section III, paragraph 7 of Order No. 2003-358 which, when broadly read, could require Duke to maintain areas outside the right-of-way. However, we do not intend for this clarification to affect the proximate problem nor the solution provided by Order No. 2003-358.

Therefore, the Commission holds that Duke and BellSouth Telecommunications, Inc. shall put their cables servicing the Tarmann property overhead, at their expense. Or in the alternative, the Commission holds that Duke and BellSouth, at their own expense, shall institute necessary construction or erosion control techniques to return and maintain their underground cables or lines within the right-of-way running to the Tarmanns’ property at their required depth and in compliance with 26 S.C. Code Ann. Regs. 103-391, 103-360, and 103-347. Additionally, Duke and BellSouth shall perform the actions

required under the provisions of this Order as soon as practical and shall notify the Commission Staff of their compliance.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)